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The TJX Companies, Inc.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DORIAN MOORE, an individual,

Plaintiff,

v.

T.J. MAXX, a business entity of unknown  
form; TJX, a business entity of unknown  
form; TJX U.S., a business entity of  
unknown form; THE TJX COMPANIES,  
INC., a business entity of unknown form;  
NASI DOE, an individual; and DOES 1-50,

Defendants.

Case No.

**DEFENDANTS T.J. MAXX OF CA,  
LLC, AND THE TJX COMPANIES,  
INC'S NOTICE OF REMOVAL OF  
CIVIL ACTION TO UNITED  
STATES DISTRICT COURT**

*[Filed Concurrently With Declaration Of  
Joan Meltzer In Support; Declaration Of  
W. Alex Koch In Support; Declaration Of  
Heather E. Horn In Support; Corporate  
Disclosure Statement; Notice Of  
Interested Parties; Civil Cover Sheet; and  
Proof of Service]*

[Removed from Los Angeles County  
Superior Court, Case No. 22STCV21826]

Date Action Filed: July 6, 2022  
Trial Date: None Set

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**TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA AND TO PLAINTIFF DORIAN MOORE AND HER COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that Defendants T.J. Maxx of CA, LLC, and The TJX Companies, Inc. (collectively, “Defendants”) hereby file this notice of removal pursuant to 28 U.S.C. sections 1332, and 1441(a) and (b), based on diversity of citizenship jurisdiction, in order to remove the above-captioned action from the Superior Court for the County of Los Angeles to the United States District Court for the Central District of California, and state that the removal is proper for the following reasons:

**I. BACKGROUND**

1. On July 6, 2022, Plaintiff Dorian Moore, (“Plaintiff”) filed a Complaint in the Superior Court of California for the County of Los Angeles, entitled “*DORIAN MOORE, an individual Plaintiff, vs. T.J. MAXX, a business entity of unknown form; TJX, a business entity of unknown form; TJX U.S., a business entity of unknown form; THE TJX COMPANIES, INC., a business entity of unknown form; NASI DOE, an individual; and DOES 1-50, Defendants,*” designated as Case No. 22STCV21826 (“Complaint”).

2. The Complaint alleges seven causes of action: (1) “Race Discrimination (FEHA) [Gov’t Code 12940(a)]”; (2) “Harassment (FEHA) [Gov’t Code 12940(i)]”; (3) “Retaliation [Gov’t Code 12940(h)]”; (4) “Failure to Take all Reasonable Steps to Prevent Discrimination, Harassment, and Retaliation” [Gov’t Code 12940(k)]; (5) “Whistleblower Protection [Labor Code §1102.5]”; (6) Wrongful Discharge in Violation of Public Policy; and (7) Unfair Business Practices. Plaintiff also asserts her Second Cause of Action for “Harassment on the Basis of National Origin, Race, and Ancestry” against individual Defendant Nasi.

3. On August 12, 2022, Plaintiff filed an Amendment to Complaint (Fictitious/Incorrect Name) naming Plaintiff’s employer, T.J. Maxx of CA, LLC, a Virginia Limited Liability Company as DOE 1. A true and correct copy of the



1 Amendment is attached to the Declaration of Heather E. Horn in support of this Notice of  
2 Removal as **Exhibit B**.

3 4. Also, on August 12, 2022, Plaintiff filed an Amendment to Complaint  
4 erroneously adding TJX Inc., a California Corporation as DOE 2. Defendants' review of  
5 the California Secretary of State website reveal that TJX Inc., California Corporation is a  
6 Trucking Company and is not a TJX Corporate Entity or related party. A true and correct  
7 copy of the Amendment and Statement of Information for TJX Inc., California  
8 Corporation is attached to the Declaration of Heather E. Horn in support of this Notice of  
9 Removal as **Exhibits C and D**.

10 5. On October 17, 2022, Defendant T.J. Maxx of CA received, via process  
11 server, the Summons, Complaint, Amendment to Complaint, Civil Case Cover Sheet,  
12 Notice of Case Assignment, Notice of Ruling, General Order, Stipulation Package, and  
13 Alternate Dispute Resolution Information Package. A true and correct copy of the packet  
14 is attached to the Declaration of Heather E. Horn in support of this Notice of Removal as  
15 **Exhibit A**.

16 6. As of the time of filing of the Notice of Removal, Defendant The TJX  
17 Companies, Inc., has not been served, but consents to the filing of this Notice of  
18 Removal.

19 7. As of the time of filing of the Notice of Removal T.J. Maxx , TJX, and TJX  
20 U.S. have not been served. Defendants' review of the California Secretary of State  
21 website reveals that T.J. Maxx , TJX, and TJX U.S. are not active corporate entities in the  
22 State of California nor have a business or legal association with Plaintiff's employer, T.J.  
23 Maxx of CA, LLC or parent company The TJX Companies, Inc. (Declaration of Heather  
24 E. Horn ("Horn Decl."), ¶ 4.)

25 8. As of the time of filing of the Notice of Removal, "Nasi" has also not been  
26 served.

27 9. On November 16, 2022, Defendant T.J. Maxx of CA, LLC, timely filed its  
28 Answer to Plaintiff's Complaint in Los Angeles County Superior Court. A true and

1 correct copy of Defendant T.J. Maxx of CA, LLC, Answer to Plaintiff's Complaint is  
2 attached the Horn Decl. as **Exhibit E**.

3 10. Also on November 16, 2022, a Request for Dismissal as to Defendant TJX  
4 Inc., a California Corporation was filed. A true and correct copy of the Request for  
5 Dismissal is attached to the Horn Decl. as **Exhibits F**.

6 11. On **November 21, 2022**, the Los Angeles Superior Court dismissed TJX  
7 Inc., a California Corporation without prejudice. A true and correct copy of the dismissal  
8 is attached to the Horn Decl. as **Exhibit G**.

9 12. Defendants have not filed or received any other pleadings or papers, other  
10 than the pleadings described as **Exhibits A, B, C, E, F and G** in this action prior to this  
11 Notice of Removal. (Declaration of Heather E. Horn ("Horn Decl."), ¶ 2.)

12 13. As discussed in greater detail below, T.J. Maxx of CA, LLC, is a citizen of  
13 Virginia and Massachusetts. The TJX Companies, Inc is a citizen of Delaware and  
14 Massachusetts.

15 14. Plaintiff also names "Nasi Doe" as a "doe defendant" and "sham"  
16 defendant, such that for purposes of diversity of citizenship jurisdiction, the individual  
17 defendant must be disregarded.

18 15. As discussed in greater detail below, jurisdiction based on diversity of  
19 citizenship is proper because Defendants T.J. Maxx of CA, LLC, and The TJX  
20 Companies, Inc are not citizens of California and the amount in controversy exceeds  
21 \$75,000.00.

## 22 **II. TIMELINESS OF REMOVAL**

23 16. "[I]f the case stated by the initial pleading is not removable, a notice of  
24 removal may be filed within 30 days after receipt by the defendant, through service or  
25 otherwise, of a copy of an amended pleading, motion, order or other paper from which it  
26 may first be ascertained that the case is one which is or has become removable." 28  
27 U.S.C. § 1446(b)(3). "[N]otice of removability under § 1446(b) is determined through  
28 examination of the four corners of the applicable pleadings." *Harris v. Bankers Life &*

1 *Cas. Co.* (9th Cir. 2005) 425 F3d 689, 693. “[I]f the plaintiff voluntarily dismisses the  
 2 diversity-destroying defendant, a defendant may then be able to remove the case.”  
 3 *Knudson v. Systems Painters, Inc.*, 634 F3d 968, 975 (8th Cir. 2011).

4 17. This Notice of Removal is timely, as it is filed within thirty (30) days of the  
 5 dismissal of Defendant TJX Inc., a California Corporation and within one (1) year of the  
 6 commencement of this action.

7 18. Written notice of the filing of this Notice of Removal is being delivered to  
 8 Plaintiff through her counsel of record. A copy of the Notice of Removal will be filed  
 9 with the Clerk of the Superior Court of the State of California for the County of Los  
 10 Angeles.

### 11 **III. PROCEEDINGS IN STATE COURT**

12 19. Attached as **Exhibits A, B, C, E, F and G** to the Declaration of Heather E.  
 13 Horn are all of the pleadings in the Superior Court’s record that have been served on  
 14 Defendants, filed by Defendants or Plaintiff, or retrieved from the Court’s records prior  
 15 to the filing of this Notice of Removal. (Horn Decl., ¶ 2.)

16 20. Written notice of the filing of this Notice of Removal is being delivered to  
 17 Plaintiff through her counsel of record. A copy of the Notice of Removal will be filed  
 18 with the Clerk of the Superior Court of the State of California for the County of Los  
 19 Angeles.

### 20 **IV. JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP**

21 21. The Court has original jurisdiction of this action under 28 U.S.C. section  
 22 1332(a)(1). As set forth below, this action is removable pursuant to the provisions of 28  
 23 U.S.C. section 1441(a) as the amount in controversy is in excess of \$75,000, exclusive of  
 24 interest and costs, and is between citizens of different states.

#### 25 **A. Plaintiff Is A Citizen Of California**

26 22. For diversity purposes, a person is a “citizen” of the state in which he or  
 27 she is domiciled. *Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir.  
 28 1983). A person’s domicile is the place he or she resides with the intent to remain

1 indefinitely. *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).  
 2 Residence is prima facie evidence of domicile. *State Farm Mut. Auto Ins. Co. v. Dyer*,  
 3 19 F.3d 514, 520 (10th Cir. 1994) (holding that “the place of residence is prima facie  
 4 [evidence of] domicile”).

5 23. Plaintiff is and, at all times since the commencement of this action has  
 6 been, a resident and citizen of the State of California. The Complaint alleges that,  
 7 “Plaintiff is, and at all times mentioned in this complaint was, a resident and citizen of  
 8 California.” (See **Ex. A**, Complaint, ¶ 9.)

9 24. In addition, Defendants’ review of Plaintiff’s personnel file and public  
 10 records reveals that Plaintiff resides in California. (See Horn Decl., ¶3, **Ex. H**;  
 11 Declaration of W. Alex Koch (“Koch Decl.”), ¶ 5.)

12 25. Plaintiff, therefore, is, and at all times since the commencement of this  
 13 action has been, a resident and citizen of the State of California.

14 **B. Defendant “The TJX Companies, Inc.” Is Not A Citizen of California**

15 26. The TJX Companies, Inc is now, and was at the time of the filing of this  
 16 action, a citizen of a State other than California within the meaning of 28 U.S.C. section  
 17 1332(c)(1). For diversity purposes, “a corporation is a citizen of (1) the state under  
 18 whose laws it is organized or incorporated; and (2) the state of its ‘principal place of  
 19 business.’” *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009)  
 20 (citing 28 U.S.C. 1332(c)(1)).

21 27. The United States Supreme Court in *The Hertz Corp. v. Friend*, 130 S. Ct.  
 22 1181, 1192 (2010), held that a corporate entity’s “principal place of business” for  
 23 determining its citizenship is its “nerve center”:

24  
 25 We conclude that “principal place of business” is best read as referring to the  
 26 place where a corporation’s officers direct, control, and coordinate the  
 27 corporation’s “nerve center.” **And in practice it should normally be the**  
 28 **place where the corporation maintains its headquarters -- provided that**  
**the headquarters is the actual center of direction, control, and**

1 **coordination, i.e., the “nerve center” . . . *The Hertz Corp.*, 130 S. Ct. at**  
 2 **1192 (emphasis added).**

3 28. The TJX Companies, Inc is now, and ever since this action commenced has  
 4 been, incorporated under the laws of the State of Delaware. (Declaration of Joan Meltzer  
 5 (“Meltzer Decl.”), ¶ 5.) Further, as shown below, The TJX Companies, Inc’s principal  
 6 place of business is, and has been at all times since this action commenced, located in the  
 7 State of Massachusetts. (*Id.* at ¶ 6.)

8 29. Pursuant to *Davis*, 557 F.3d at 1029 and *The Hertz Corp.*, 130 S. Ct. at 1192,  
 9 The TJX Companies, Inc’s principal place of business is Massachusetts because its  
 10 “nerve center” is located in that state. The TJX Companies, Inc’s corporate headquarters  
 11 are located in Framingham, Massachusetts where The TJX Companies, Inc’s high level  
 12 officers direct, control, and coordinate its activities. (Meltzer Decl., ¶ 6.) The TJX  
 13 Companies, Inc’s high level corporate officers maintain offices in Framingham,  
 14 Massachusetts, and many of The TJX Companies, Inc’s corporate level functions are  
 15 performed in the Framingham, Massachusetts offices. (*Id.*) Additionally, many of The  
 16 TJX Companies, Inc’s executive and administrative functions, including corporate  
 17 finance and accounting, are directed from the Framingham, Massachusetts offices. (*Id.*)

18 30. Therefore, for purposes of diversity of citizenship, The TJX Companies, Inc  
 19 is, and has been at all times since this action commenced, a citizen of the State of  
 20 Delaware and Massachusetts and diversity exists between Plaintiff and The TJX  
 21 Companies, Inc. 28 U.S.C. 1332(c)(1).

22 **C. Defendant “T.J. Maxx of CA, LLC,” Is Not A Citizen Of California**

23 31. T.J. Maxx of CA, LLC is now and, at all times since the commencement of  
 24 this action has been, a citizen of a State other than California within the meaning of 28  
 25 U.S.C. section 1332(c)(1). *See Davis*, 557 F.3d at 1028 (citing 28 U.S.C. 1332(c)(1));  
 26 *The Hertz Corp.*, 559 U.S. at 92-93.

32. “A [ ] partnership or a corporation is a citizen of (1) the state under whose laws it is organized or incorporated; and (2) the state of its ‘principal place of business.’” *Davis v. HSBC Bank Nevada, N.A.*, 557 F.3d 1026, 1028 (9th Cir. 2009) (citing 28 U.S.C. § 1332(c)(1)).

33. Moreover, unincorporated associations such as limited liability companies and partnerships are also treated as “a citizen of every state of which its owners/members are citizens.” *Johnson*, 437 F.3d at 899; *see also Grupo Dataflux v. Atlas Global Grp., LP*, 541 US 567, 569 (2004) (same); *Carden v. Arkoma Assocs.*, 494 US 185, 195, 110 S.Ct. 1015, 1021 (1990) (same).

34. In this case, T.J. Maxx of CA, LLC is now, and ever since this action commenced has been, a limited liability company, organized under the laws of the State of Virginia. (Meltzer Decl., ¶ 7.) T.J. Maxx of CA, LLC a wholly owned subsidiary of The TJX Companies, Inc. (“TJX”). The TJX Companies, Inc.’s principal place of business is in Massachusetts because it is where its headquarters is located and where its high level officers direct, control and coordinate its activities. (*Id.* at ¶ 8.) Additionally, the majority of The TJX Companies, Inc.’s executive and administrative functions are performed in or directed from the Framingham, Massachusetts office, including corporate finance, accounting, purchasing, marketing and information systems. (*Id.*)

35. Even if this Court were to consider the citizenship of T.J. Maxx of CA, LLC members, it is still not a citizen of California because, as discussed below, **none** of its members and sub-members—(1) NBC Operating, LP, and (2) NBC Trust—are a citizen of the State of California. Thus, there is diversity between Plaintiff and T.J. Maxx of CA, LLC.

### 1. NBC Operating, LP, Is Not A Citizen Of California

36. At all times since Plaintiff commenced this lawsuit, T.J. Maxx of CA, LLC’s sole member has been NBC Operating, LP, and it owns 100% of T.J. Maxx of CA, LLC. (Meltzer Decl. ¶ 9.)



37. NBC Operating, LP, is a limited partnership that at all relevant times during this litigation was organized under the laws of the State of Delaware with its principal place of business in Massachusetts. (*Id.* at ¶ 10-11.) NBC Operating, LP’s principal place of business is in Massachusetts because it is where its headquarters is located and where its high level officers direct, control and coordinate its activities. (*Id.* at ¶ 11.) Additionally, the majority of NBC Operating, LP’s executive and administrative functions are performed in or directed from the Massachusetts office, including corporate finance, accounting, purchasing, marketing and information systems. (Meltzer Decl. ¶ 11.)

38. Because NBC Operating, LP, is a partnership, the Court may also examine the citizenship of its members—NBC GP, LLC and NBC Trust—for purposes of establishing diversity jurisdiction. *See V & M Star, LP v. Centimark Corp.*, 596 F.3d 354, 357 (6th Cir. 2010) (When a member of a limited liability company is itself a partnership or association, “the federal court needs to know the citizenship of each ‘sub-member’ as well.”).

39. At all times since Plaintiff commenced this lawsuit, NBC Operating, LP’s general partner has been NBC GP, LLC, a Delaware limited liability company, and its limited partner has been NBC Trust. (Meltzer Decl. ¶ 12.) NBC Trust owns 100% of NBC Operating, LP. (*Id.*)

## 2. NBC GP, LLC Is Not a Citizen Of California

40. NBC GP, LLC is a limited liability company that at all relevant times during this litigation was organized and existing under the laws of the State of Delaware. (Meltzer Decl. ¶ 13.)

41. NBC GP, LLC’s headquarters is located in Framingham, Massachusetts where its high level officers direct, control and coordinate its activities. (*Id.* at ¶ 14.) Additionally, the majority of NBC GP, LLC’s executive and administrative functions are performed in or directed from the Framingham, Massachusetts offices, including corporate finance, accounting, purchasing, marketing and information systems. (*Id.*)

42. At all times since Plaintiff commenced this lawsuit, NBC GP, LLC's sole member has been NBC Trust, and it owns 100% of NBC GP, LLC. (*Id.* at 15.)

### 3. NBC Trust Is Not A Citizen Of California

43. At all times since Plaintiff commenced this lawsuit, NBC Operating, LP's limited partner has been NBC Trust, and it owns 100% of NBC Operating, LP. (Meltzer Decl. ¶ 12.)

44. NBC Trust is a citizen for the State of Massachusetts because it is organized under the laws of the State of Massachusetts. (Meltzer Decl. ¶ 16.) NBC Trust's headquarters is located in Framingham, Massachusetts, where its high level officers direct, control, and coordinate its activities. Additionally, the majority of NBC Trust's executive and administrative functions are performed in or directed from the Framingham, Massachusetts offices, including corporate finance, accounting, purchasing, marketing and information systems. (*Id.* at 17.)

### D. Dismissed Defendant "TJX, Inc." Cannot Defeat Diversity

45. If diversity of citizenship is lacking at the time the state action was filed, but within one year, plaintiff voluntarily dismisses or amends the complaint to abandon the action against the non-diverse defendant, the remaining diverse defendants are entitled to remove. *Chohlis v. Cessna Aircraft Co.* 760 F.2d 901, 903, fn. 2 (8th Cir. 1985); *Higgins v. Pittsburgh-Des Moines Co.* 635 F.Supp. 1182, 1184 (SD TX 1986). For removal to be possible, there must be a definite or unequivocal expression of intent to discontinue the action against the non-diverse defendant. This could be a written settlement agreement, a formal stipulation of dismissal, etc. *Delatte v. Zurich Ins. Co.* 683 F.Supp. 1062, 1063 (MD LA 1988)—statement of "no hope of recovery" insufficient; *Naef v. Masonite Corp.* 923 F.Supp. 1504, 1510, 1511 (SD AL 1996)—statement that defendants "not essential to liability issue" insufficient; *Heniford v. American Motors Sales Corp.* 471 F.Supp. 328, 344 (D SC 1979)—dropping non-diverse defendant during argument to jury triggered right to remove.



46. Here, Plaintiff agreed to voluntarily dismiss TJX Inc., a California Corporation, and this agreement was memorialized through a filed Request for Dismissal and subsequent dismissal by the Los Angeles Superior Court. This dismissal created complete diversity with the remaining corporate Defendants. Therefore, the citizenship of the dismissed defendant should be disregarded as the remaining parties (Plaintiff Dorian Moore and Defendants T.J. Maxx of CA, LLC and The TJX Companies, Inc) now have complete diversity.

**E. Doe Defendants May Be Disregarded**

47. Pursuant to 28 U.S.C. Section 1441(a), the residence of fictitious and unknown defendants should be disregarded for purposes of establishing removal jurisdiction under 28 U.S.C. section 1332. *Fristoe v. Reynolds Metals, Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not required to join in a removal petition). Thus, the existence of Doe defendants, 3-50, does not deprive this Court of jurisdiction.

48. Nasi Doe is a Doe Defendant and should be disregarded.

**F. Defendant Nasi Doe's Citizenship Should Be Disregarded Because She is A Sham Defendant**

49. Defendant Nasi Doe must be disregarded for purposes of diversity because she is a sham defendant; that is, she cannot be found liable as a matter of law. *See, e.g., Morris v. Princess Cruises, Inc.*, 236 F.3d 1061, 1067 (9th Cir. 2001) (holding that removal based on diversity of citizenship was proper and that district court "correctly ignored" joinder of a resident defendant after it was shown that plaintiff "could not possibly prevail" on her claim against the resident defendant); *Dodson v. Spillada Maritime Corp.*, 951 F.2d 40, 42 (5th Cir. 1992) (finding fraudulent joinder of non-diverse defendants where there was "no possibility that [plaintiff] would be able to establish a cause of action against them").

50. Nasi Doe is a sham defendant because she has been fraudulently named. *See Ritchey v. Upjohn Drug Co.*, 139 F.3d 1313, 1318 (9th Cir. 1998) ("[F]raudulently

1 joined defendants will not defeat removal on diversity grounds.”), *cert. denied*, 525 U.S.  
2 963 (1998); *McCabe v. Gen. Foods Corp.*, 811 F.2d 1336, 1339 (9th Cir. 1987) (“If the  
3 plaintiff fails to state a cause of action against a resident defendant, and the failure is  
4 obvious according to the settled rules of the state, the joinder of the resident defendant is  
5 fraudulent.”); *Lewis v. Time, Inc.*, 83 F.R.D. 455, 460 (E.D. CAL. 1979), *aff’d*, 710 F.2d  
6 549 (9th Cir. 1983) (a sham defendant is to be ignored for purposes of removal).

7 51. Joinder of a defendant is fraudulent if the defendant cannot be liable to the  
8 plaintiff on any theory alleged in the complaint. *Ritchey*, 139 F.3d at 1318 (“If the  
9 plaintiff fails to state a cause of action against a resident defendant, and the failure is  
10 obvious according to the settled rules of the state, the joinder of the resident defendant is  
11 fraudulent.”) (quoting *McCabe*, 811 F.2d at 1339)).

12 52. When determining whether a defendant is fraudulently joined, “[t]he court  
13 may pierce the pleadings, consider the entire record, and determine the basis of joinder  
14 by any means available.” *Lewis*, 83 F.R.D. at 455 (“[I]t is well settled that upon  
15 allegations of fraudulent joinder . . . federal courts may look beyond the pleadings to  
16 determine if the joinder . . . is a sham of fraudulent device to prevent removal.”);  
17 *McCabe*, 811 F.2d at 1339 (a defendant “is entitled to present the facts showing the  
18 joinder to be fraudulent”).

19 53. The applicable standard parallels the standard used in deciding motions to  
20 dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. *Morris*, 236 F. 3d.  
21 at 1067-68. As such, the Complaint’s “factual allegations must be enough to raise a right  
22 to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555  
23 (2007) (allegations must contain “plausible grounds to infer” that plaintiff is entitled to  
24 relief). Further, the claim fails where it lacks facts sufficient to support a cognizable  
25 legal theory. *Balisteri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th. Cir. 1990); *see*  
26 *also Toth v. Guardian Indus. Corp.*, 2012 WL 468244, at \*5 (E.D. Cal. Feb. 13, 2012)  
27 (motion for remand denied where defamation claim against individual defendant was  
28 insufficiently plead).

54. Here, Plaintiff has fraudulently named Nasi Doe– an individual supervisor – as a defendant to her Second Cause of Action for “Harassment on the Basis of Race.” However, the claim against Nasi Doe is not viable for several reasons: (1) the managerial privilege precludes personal liability on the harassment claim; and (2) the harassment claim fails because Plaintiff cannot establish that the conduct was severe or pervasive.

### 1. Conduct Allegedly Carried Out By Defendant Nasi Doe

55. Because Plaintiff’s claims for harassment are based solely on personnel decisions, Nasi Doe, as a matter of law, cannot be liable. As the California Supreme Court held in *Reno v. Baird*, 18 Cal. 4th 640, 647 (1998), only employers are liable for the personnel management actions of their supervisors:

By the inclusion of the “agent” language, the Legislature intended only to ensure that **employers** will be held liable if their supervisory employees take actions later found discriminatory, and that **employers** cannot avoid the liability by arguing that a supervisor failed to follow instructions or deviated from the employer’s policy.

*Id.* Thus, the Court held that “it is ‘inconceivable’ that the Legislature simultaneously intended to subject individual non-employers to the burdens of litigating such claims. To so construe the statute would be ‘incongruous’ and ‘would upset the balance’ struck by the Legislature.” *Id.* at 651 (citations omitted). The Court then cautioned that “if every personnel manager risks losing his or her home, retirement savings, hope of children’s college education, etc., whenever he or she made a personnel management decision, management of industrial enterprises and other economic organizations would be seriously affected.” *Id.* at 652-653. Moreover, the court in *Reno* defined harassment, and specifically excluded from that definition conduct which is part and parcel of a supervisory employee’s job performance. *Id.* at 645-46.

56. Under the doctrine of managerial privilege, individual managers cannot be held personally liable for tort claims brought by other employees arising from actions

1 taken within the course and scope of their managerial capacity. *McCabe*, 811 F.2d at  
 2 1339 (applying California law, the court held that plaintiff’s tort claims against two  
 3 individual managers failed as a matter of law because “[the managers’] actions,  
 4 according to the complaint, had been in their managerial capacity . . . [and] ratified by  
 5 [their employer] . . . . [I]t is clear that ‘if an agent is motivated in part by a desire to  
 6 benefit his principle,’ his conduct is, under California law, privileged.”) (citation  
 7 omitted).

8 57. Here, Plaintiff’s allegations demonstrate that Nasi Doe’s conduct cannot  
 9 give rise to liability. The sum total of allegations raised by Plaintiff against Nasi Doe  
 10 include:

- 11 a. “PLAINTIFF exhibited various hairstyles and received  
 12 harassment from her Assistant Manager NASI and others  
 13 as a result.” (Ex. A ¶ 11)
- 14 b. “On or about January 17, 2021, when PLAINTIFF put her  
 15 hair in braids and went into work, NASI told  
 16 PLAINTIFF, ‘Jamaican me crazy,’ PLAINTIFF is not  
 17 Jamaican, and the comments from her manager made her  
 very uncomfortable.” (Ex. A ¶ 12)
- 18 c. “On or about February 20, 2021, when PLAINTIFF wore  
 19 her hair in an afro, NASI called her a ‘wild girl,’ and then  
 20 yelled across the store to Libi, ‘did you see Dorian’s  
 21 hair?’ NASI then said to PLAINTIFF, “I want to touch  
 your hair, but I cannot touch it.” (Ex. A ¶ 13)
- 22 d. “In addition to the racially based comments on her hair,  
 23 PLAINTIFF was also treated differently based on her race  
 24 as all her co-workers were taught to work on the cash  
 25 register or in the back. PLAINTIFF was not taught to do  
 either. Further, PLAINTIFF was never promoted at the  
 26 store.” (Ex. A ¶ 15)
- 27 e. “On or about March 10, 2021, PLAINTIFF wore bantu  
 28 knots and braids to work. In earshot of Roya, NASI  
 approached PLAINTIFF and said, “your hair is wild.” I

1 response, PLAINTIFF said to NASI that she did not like  
 2 when NASI called her hair “wild” and to please use a  
 3 different word. NASI, responded, “Oh, like what other  
 4 words?” PLAINTIFF suggested that she say her hair is  
 5 “nice” or “beautiful.” NASI then said she had a friend that  
 6 wore her hair like PLAINTIFF.” (Ex. A ¶ 18)

7 f. “PLAINTIFF also complained to NASI herself but the  
 8 harassment and discrimination continued.” (*Id.* at ¶ 17).

9 g. “On or about March 14, 2021, PLAINTIFF was  
 10 constructively terminated.” (*Id.* at ¶ 20)

11 58. Plaintiff has only one cause of action, harassment against Nasi Doe however  
 12 there are no facts pled that show how Nasi Doe treated Plaintiff differently on the basis of  
 13 her national origin, race, and ancestry or that any such treatment led to PLAINTIFF being  
 14 constructively discharged, beyond the allegations cited above.

15 59. Further, as a matter of law, personnel management decisions are not  
 16 harassment. *Janken v. GM Hughes Elecs.*, 46 Cal. App. 4th 55, 64 (1996) (“harassment  
 17 consists of conduct outside the scope of necessary job performance, conduct presumably  
 18 engaged in for personal gratification, because of meanness or bigotry, or for other  
 19 personal motives. . . . [C]ommonly necessary personnel management actions . . . do not  
 20 come within the meaning of harassment”); *Reno v. Baird*, 18 Cal. 4th 640, 646 (1998)  
 21 (concluding that “the exercise of personnel management authority properly delegated by  
 22 an employer to a supervisory employee might result in discrimination, but not in  
 23 harassment”) (quoting *Janken*, 46 Cal. App. 4th at 64).

24 60. Here, any decision as to whether Plaintiff was taught the cash register or if  
 25 she was eligible for promotion involved personnel actions directly and necessarily related  
 26 to her management duties. These alleged actions directly pertain to personnel  
 27 management and do not come within the meaning of harassment. *See Reno*, 18 Cal. 4th  
 28 at 646 (“personnel management actions, such as hiring and firing, . . . promotion or

1 demotion, performance evaluations, . . . and the like, do not come within the meaning of  
2 harassment”).

3                   **2. Nasi Doe Is A Sham Defendant Because The Lack Of Severe Or**  
4                   **Pervasive Conduct Precludes Personal Liability On Her**  
5                   **Workplace Harassment Claim**

6           61. The conduct attributed to Nasi Doe by Plaintiff cannot support a claim for  
7 harassment. None of the conduct alleged by Plaintiff is severe or pervasive enough, as a  
8 matter of law, to constitute unlawful harassment.

9           62. Plaintiff must prove she was subjected to harassing conduct because of her  
10 national origin, race, and ancestry that was sufficiently severe or pervasive so as to alter  
11 the conditions of her employment. *Fisher v. San Pedro Peninsula Hospital*, 214 Cal.  
12 App. 3d 590, 608 (1989). The gravamen of a harassment claim is that, to be actionable,  
13 the conduct at issue is so severe or pervasive as to create an abusive working  
14 environment. *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67 (1986). “In determining  
15 what constitutes ‘sufficiently pervasive’ harassment, the courts have held acts of  
16 harassment cannot be occasional, isolated, sporadic, or trivial, rather the plaintiff must  
17 show a concerted pattern of harassment of a repeated, routine or a generalized nature.”  
18 *Mokler v. County of Orange*, 157 Cal. App. 4th 121, 142 (2007).

19           63. Nasi Doe’s conduct cannot be considered severe because there was no  
20 physical threat or harm. *See Hughes v. Pair*, 46 Cal. 4th 1035, 1049 (2009) (summary  
21 judgment affirmed for the employer; “employment law acknowledges that an isolated  
22 incident of harassing conduct may qualify as ‘severe’ when it consists of a physical  
23 assault or threat thereof”); *Lyle v. Warner Bros. Television Prods.*, 38 Cal. 4th 264, 284  
24 (2006) (same).

25           64. Further, Nasi Doe’s conduct cannot be considered severe or pervasive  
26 because even repeated instances of verbal abuse, profane language, and threats of job  
27 loss are insufficient. *See e.g., Hughes*, 46 Cal. 4th at 1049 (summary judgment affirmed  
28 for the employer; a supervisory employee threatened plaintiff’s job and plaintiff was  
told “I’ll get you on your knees eventually. I’m going to fuck you one way or another;”



1 “Most reasonably construed, defendant’s comment was a threat ... of financial  
2 retaliation”).

3 65. Plaintiff’s cause of action is a textbook example of what harassment is **not**.  
4 The conduct Plaintiff claims to be “harassment” is too trivial to be actionable. *See, e.g.,*  
5 *Reno v. Baird*, 18 Cal. 4th 640, 646-47 (1998); *Hardin v. Wal-Mart Stores, Inc.*, No.  
6 CIV-F-08-0617 AWI, 2012 WL 691707 at \* 18 (E.D. Cal., Mar. 2, 2012) (“Personnel  
7 management actions commonly necessary to carry out the duties of business and  
8 personnel management, and thus outside the purview of harassment, include ‘hiring and  
9 firing, job or project assignments, office or work station assignments, promotion or  
10 demotion, performance evaluations, the provision of support, the assignment or non-  
11 assignment of supervisory functions’ and decisions regarding meetings.”).

12 66. Plaintiff’s allegations of personnel management decisions, such as  
13 promoting other employees, hardly meets the necessary standard. As such, what  
14 Plaintiff claims to be harassment falls short of being adequately “severe or pervasive.”

## 15 **V. AMOUNT IN CONTROVERSY**

16 67. While Defendants deny any liability as to Plaintiff’s claims, the amount in  
17 controversy requirement is satisfied because “it is more likely than not” that the amount  
18 exceeds the jurisdictional minimum of \$75,000. *See Sanchez v. Monumental Life Ins.*,  
19 102 F.3d 398, 403-04 (9th Cir. 1996) (“[T]he defendant must provide evidence  
20 establishing that it is ‘more likely than not’ that the amount in controversy exceeds [the  
21 threshold] amount.”) (internal quotations and citations omitted).

22 68. As explained by the Ninth Circuit, “the amount-in-controversy inquiry in  
23 the removal context is not confined to the face of the complaint.” *Valdez v. Allstate Ins.*  
24 *Co.*, 372 F.3d 1115, 1117 (9th Cir. 2004) (finding that the Court may consider facts  
25 presented in the removal petition). When the amount in controversy is not apparent  
26 from the face of the complaint, a defendant may state underlying facts supporting its  
27 assertion that the amount in controversy exceeds the jurisdictional threshold. *Gaus v.*  
28 *Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992).

69. In determining the amount in controversy, the Court must consider the aggregate of general damages, special damages, punitive damages, and attorneys' fees. *Galt G/S v. JSS Scandinavia*, 142 F. 3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to be included in amount in controversy, regardless of whether such an award is discretionary or mandatory); *Davenport v. Mut. Benefit Health & Accident Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963) (punitive damages must be taken into account where recoverable under state law); *Conrad Assocs. v. Hartford Accident & Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998) ("amount in controversy" includes claims for general and special damages, including attorneys' fees and punitive damages).

70. Here, considered together, the general and special damages sought by Plaintiff, along with the attorneys' fees and punitive damages that might be awarded if Plaintiff prevails, establish by a preponderance of the evidence that the amount in controversy exceeds \$75,000, exclusive of interest and costs, as required by 28 U.S.C. § 1332(a).

**A. Plaintiff's Complaint Establishes That The Amount In Controversy Is At Least \$2,000,000**

71. When a defendant seeks removal on diversity grounds, "the sum demanded in good faith [by the plaintiff] in the initial pleading shall be deemed to be the amount in controversy." 28 U.S.C. § 1446(c)(2); *see Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398, 402 (9th Cir. 1996) ("[T]he sum claimed by the plaintiff controls," unless it appears "that the claim is really for less than the jurisdictional amount.") (quoting *St. Paul Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938)).

72. In Plaintiff's initial pleading, Plaintiff requests relief on the first through seventh cause of action in the total amount of \$2,000,000. Plaintiff alleges she is entitled to back pay in the amount of \$500,000; front pay in the amount of \$500,000, and general damages in the amount of \$1,000,000. In addition to punitive damages, attorney fees, and costs of suit in an amount to be proven at trial. (See Ex. A Complaint ¶ 78; Relief, at ¶¶ 1-8 ).



73. Accordingly, Plaintiff's demand for an amount of damages of **no less than \$2,000,000** should be deemed the amount in controversy, which satisfies and exceeds the jurisdictional threshold.

**B. Plaintiff's Claims Otherwise Exceed 75,000**

74. Even with Plaintiff's specific request for \$2,000,000 in damages, Plaintiff's claims otherwise would exceed the amount in controversy. The amount in controversy requirement is satisfied because "it is more likely than not" that it exceeds the jurisdictional minimum based on the allegations in Plaintiff's Complaint. *See Sanchez*, 102 F.3d at 404 ("the defendant must provide evidence establishing that it is 'more likely than not' that the amount in controversy exceeds [the threshold] amount") (internal citation omitted).

75. In the Complaint, Plaintiff alleges seven causes of action against Defendants for: (1) "Race Discrimination (FEHA) [*Gov't Code* 12940(a)]"; (2) "Harassment (FEHA) [*Gov't Code* 12940(i)]"; (3) "Retaliation [*Gov't Code* 12940(h)]"; (4) "Failure to Take all Reasonable Steps to Prevent Discrimination, Harassment, and Retaliation" [*Gov't Code* 12940(k)]; (5) "Whistleblower Protection [*Labor Code* §1102.5]"; (6) Wrongful Discharge in Violation of Public Policy; and (7) Unfair Business Practices. Thus, it is more likely than not that the amount in controversy exceeds \$75,000.

76. Further, Plaintiff claims general and special damages, including, but not limited to, interest, attorney's fees, penalties, costs, expenses, wages, monetary compensation for discrimination, punitive damages, and emotional damages. (*See Ex. A, Complaint*, ¶78 Relief, at ¶¶ 1-8).

77. At the time of her separation, Plaintiff earned \$15.00 per hour. (*Koch Decl.*, ¶ 5.) Given that Plaintiff alleges that she was constructively terminated on March 14, 2021, she has already incurred over one year and seven months of lost compensation to date. (*Ex. A, Compl.* ¶ 20.) Plaintiff's approximate annual income would be at least \$23,400, based on the calculation of \$15.00 (hourly rate) x 30 (average hours per week

1 in the year prior to termination) x 52 weeks. Accordingly, Plaintiff has already incurred  
 2 at least **\$40,950** of lost compensation (hourly rate of \$15.00 X 30 hours per week X 91  
 3 weeks (March 14, 2021 to November 13, 2022)).

4 78. Additionally, should Plaintiff prevail at trial, it is more likely than not that  
 5 she would recover over \$75,000 in damages as there have been, in recent years, several  
 6 verdicts in discrimination cases entered in favor of plaintiffs in California where the  
 7 awarded damages exceeded \$75,000. *See e.g. Leggins v. Thrifty Payless Inc. D/B/A/ Rite*  
 8 *Aid*, 2015 WL 4748037 (Los Angeles County Sup. Ct.) (\$8,769,128 verdict in FEHA  
 9 race/color discrimination, disability discrimination, and punitive damages); *Assaad v.*  
 10 *State of California*, 2017 WL 2831363 (Los Angeles County Sup. Ct.) (\$119,000 verdict  
 11 on plaintiff's claims for FEHA race/color discrimination and national origin  
 12 discrimination); *Harris v. Herring Networks Inc.*, 2020 WL 1890593 (San Diego County  
 13 Sup. Ct.) (\$1,099,674 verdict on plaintiff's claims for race/color harassment and  
 14 discrimination, retaliation, failure to prevent discrimination, harassment and retaliation  
 15 under FEHA, and punitive damages); *Beard v. Los Angeles Cnty. Law Library*, 2009 WL  
 16 250543 (Los Angeles Sup. Ct.) (award of \$146,000 to employee who was wrongfully  
 17 terminated based upon her age and race).

18 79. Plaintiff's allegations that she was discriminated against and constructively  
 19 discharged because of her race are similar to the issues in these cases. Defendants have  
 20 attached these verdicts as **Exhibit I** to the concurrently filed Declaration of Heather E.  
 21 Horn for the Court's review.

### 22 **C. Emotional Distress Damages**

23 80. In addition to Plaintiff's request for general damages in the amount of  
 24 \$1,000,000. (*See* Ex. A, Complaint, ¶78). A review of jury verdicts in California  
 25 demonstrates that emotional distress awards in discrimination cases commonly exceed  
 26 \$75,000. *See Silverman v. Stuart F. Cooper Inc.*, 2013 WL 5820140 (Los Angeles Sup.  
 27 Ct.) (jury awarded \$157,001 for emotional distress damages in discrimination case);  
 28 *Vasquez v. Los Angeles Cnty. Metro. Transp. Auth.*, 2013 WL 7852947 (Los Angeles

Sup. Ct.) (award of \$1,250,000 for pain and suffering to employee in discrimination action); *Aboulafia v. GACN Inc.*, 2013 WL 8115991 (Los Angeles Sup. Ct.) (pain and suffering award of \$250,000, \$250,000, \$250,000, and \$250,267 to four employees in discrimination action); *Ward v. Cadbury Schweppes Bottling Grp.*, 2011 WL 7447633 (C.D. Cal) (jury award \$5,600,000 in non-economic damages in discrimination and retaliation case); *Welch v. Ivy Hill Corp.*, 2011 WL 3293268 (Los Angeles Sup. Ct.) (award of \$1,270,000 in pain and suffering to employee in a discrimination action); *Leimandt v. Mega RV Corp.*, 2011 WL 2912831 (Orange County Sup. Ct.) (jury awarded \$385,000 in pain and suffering to employee in a discrimination case); *Peacock v. Quest Diagnostics*, 2010 WL 6806990 (C.D. Cal.) (jury award of \$150,000 in non-economic loss to employee in action for discrimination action).

81. Plaintiff's allegations of emotional distress are similar to the issues raised in these cases. Defendants have attached these verdicts as **Exhibit I** to the concurrently filed Declaration of Heather E. Horn for the Court's review.

**D. Attorney's Fees and Costs Also Could Exceed \$75,000**

82. Plaintiff claims that she is entitled to attorneys' fees and costs. . (See Horn Decl., Ex. A, Complaint, ¶78; Relief, at ¶6 ). Attorneys' fees are properly considered in calculating the amount in controversy for purposes of removal on grounds of diversity jurisdiction. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1156 (9th Cir. 1998) (claims for statutory attorneys' fees to be included in amount in controversy, regardless of whether such an award is discretionary or mandatory).

83. Courts have also awarded far in excess of \$75,000.00 in attorneys' fees in cases involving employment-related claims. See, e.g., *Crawford v. DIRECTV, Inc.*, 2010 WL 5383296 (Los Angeles County Sup. Ct.) (approving attorneys' fee award of \$159,762.50); *Davis v. Robert Bosch Tool Corp.*, 2007 WL 2014301, \*9 (Cal. Ct. App. 2d Dist. July 13, 2007) (individual plaintiff sought \$1.6 million in fees); *Denenberg v. Cal. Dep't of Transp.*, 2006 WL 5305734 (San Diego County Sup. Ct.) (attorneys' fees

award of \$490,000 for claims). Defendants have attached these verdicts as **Exhibit J** to the concurrently filed Declaration of Heather E. Horn for the Court's review.

84. Defendants anticipate depositions being taken in this case, and that ultimately, Defendants will file a Motion for Summary Judgment. Based on defense counsel's experience, attorneys' fees in employment discrimination and wrongful termination cases often exceed \$75,000. In this regard, it is more likely than not that the fees will exceed \$75,000.00 through discovery and a summary judgment hearing, and the fees would certainly exceed \$75,000.00 if the case proceeds to trial. (Horn Decl., ¶ 4.)

#### **E. Punitive Damages**

85. Finally, the Court must also consider Plaintiff's request for punitive damages in determining the amount in controversy. *Davenport v. Mutual Benefit Health and Accident Ass'n*, 325 F.2d 785, 787 (9th Cir. 1963) (punitive damages must be taken into account where recoverable under state law). (See Ex. A, Complaint, ¶78, Relief, ¶ 5.)

86. Plaintiff's employer, Defendant T.J. MAXX of CA, LLC, is a large entity. The economic resources of the defendant and the amount of compensatory damages are two of three factors courts consider in arriving at punitive damage awards. See, e.g., *Lane v. Hughes Aircraft Co.*, 22 Cal. 4th 405, 417 (2000) (finding "three factors relevant to the assessment of punitive damages: (1) the degree of reprehensibility of the act; (2) the amount of compensatory damages awarded; and (3) the wealth of the particular defendant."). In *State Farm Mutual Automobile Insurance Co. v. Campbell*, 538 U.S. 408, 427-28 (2003), the Court held that: "The wealth of a defendant cannot justify an otherwise unconstitutional punitive damages award . . . That does not make its use [in determining the constitutionality of punitive damage awards] unlawful or inappropriate; it simply means that this factor cannot make up for the failure of other factors. . . ." (internal citations omitted). Therefore, the request for punitive damages weighs in favor of establishing the amount in controversy.

1           87. Courts have affirmed jury verdicts in cases with claims similar to  
 2 Plaintiff's claims often exceed \$75,000, especially when they include punitive damages,  
 3 which Plaintiff also seeks. *See, e.g., Aboulida v. GACN Inc.*, 2013 WL 811991 (Los  
 4 Angeles Sup. Ct.) (award of \$1,000,000 in punitive damages in discrimination case);  
 5 *Ward v. Cadbury Schweppes Bottling Grp.*, 2011 WL 7447633 (C.D. Cal.) (jury  
 6 awarded \$9,687,400 in punitive damages to six employees in discrimination and  
 7 retaliation action).

8           88. Based upon the allegations contained in the Complaint, Defendants are  
 9 informed and believe that Plaintiff seeks damages within the jurisdictional authority of  
 10 this Court. Because diversity of citizenship exists between Plaintiff and Defendants,  
 11 and the matter in controversy between the parties is in excess of \$75,000.00, this Court  
 12 has original jurisdiction of the action pursuant to 28 U.S.C. section 1332(a)(1). This  
 13 action is therefore a proper one for removal to this Court.

## 14 **VI. VENUE**

15           89. Venue lies in the Central District of California pursuant to 28 U.S.C. §  
 16 1441(a), 1446 (a), and 84(c). This action originally was brought in the Superior Court  
 17 of California, County of Los Angeles, which is located within the Central District of the  
 18 State of California. Therefore, venue is proper in this Court because it is the "district  
 19 and division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

## 20 **VII. NOTICE OF REMOVAL**

21           90. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice  
 22 of Removal will be given promptly to Plaintiff and, together with a copy of the Notice  
 23 of Removal, will be filed with the Clerk of the Superior Court of the State of California,  
 24 County of Los Angeles.

25           91. This Notice of Removal will be served on counsel for Plaintiff. A copy of  
 26 the Proof of Service regarding the Notice of Removal will be filed shortly after these  
 27 papers are filed and served.  
 28

1           92. In compliance with 28 U.S.C. section 1446(a), true and correct copies of all  
2 process, pleadings, and orders filed and/or served in this action are attached as **Exhibits**  
3 **A, B, C, E, F and G** to the concurrently filed Declaration of Heather E. Horn.

4 **VIII. RESERVATION OF RIGHTS**

5           93. By filing this Notice of Removal, Defendants do not concede nor waive  
6 any defense to this action.

7 **IX. PRAYER FOR REMOVAL**

8           94. WHEREFORE, Defendants pray that this civil action be removed from the  
9 Superior Court of the State of California, County of Los Angeles, to the United States  
10 District Court for the Central District of California.

11 DATED: December 16, 2022

Respectfully submitted,

SEYFARTH SHAW LLP

14 By: Heather E. Horn  
15 Jonathan L. Brophy  
16 Heather E. Horn  
17 Attorneys for Defendant  
18 T.J. Maxx of CA, LLC. and  
19 The TJX Companies, Inc.  
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